

RESOLUTION NO. R1-2006-0042

Adopting

Waste Discharge Requirements
for
Timber Harvesting Plan Activities
Conducted by, or on Land Owned by
The Green Diamond Resource Company
in the
South Fork Elk River Watershed

Humboldt County

FINDINGS

The California Regional Water Quality Control Board, North Coast Region, (hereinafter Regional Water Board) finds that:

1. The Green Diamond Resource Company (hereinafter referred to as the "Discharger") owns and/or conducts Timber Harvesting Plan Activities on approximately 1,900 acres (15%) of the 12,442-acre South Fork Elk River watershed. The South Fork is one of two major tributaries of Elk River, the other being the North Fork Elk River is located southeast of Eureka and flows into Humboldt Bay.
2. The Discharger conducts timber harvesting, forestry management, road construction and maintenance, and related activities on the lands in the Elk River watershed within its ownership. Their ownership is comprised of approximately 1,900 acres (15%) of the 12,442-acre South Fork Elk River watershed, specifically in McCloud Creek and Tom and Railroad Gulches, tributaries to the South Fork Elk River. The discharger proposes to conduct timber harvesting plan activities on approximately 750 acres (or 40% of their ownership in the watershed) over a 15-year period, ending in 2015.
3. These activities, in general, result in impacts including increased storm water runoff and discharges of sediment, including discharges resulting from the generation of landslides.

Beneficial Uses

4. Pursuant to the Water Quality Control Plan for the North Coast Region (Basin Plan), including State Water Resources Control Board (State Water Board) Resolution No. 88-63, the existing and potential beneficial uses of the Eureka Plain Hydrologic Unit, including the Elk River and its tributaries, are:
 - a. Municipal and Domestic Supply (MUN)

- b. Agricultural Supply (AGR)
 - c. Industrial Service Supply (IND)
 - d. Groundwater Recharge (GWR)
 - e. Freshwater Replenishment (FRSH)
 - f. Navigation (NAV)
 - g. Hydropower Generation (POW)
 - h. Water Contact Recreation (REC-1)
 - i. Non-contact Water Recreation (REC-2)
 - j. Commercial and Sports Fishing (COMM)
 - k. Cold Freshwater Habitat (COLD)
 - l. Wildlife habitat (WILD)
 - m. Rare, Threatened, or Endangered Species (RARE)
 - n. Marine Habitat (MAR)
 - o. Migration of Aquatic Organisms (MIGR)
 - p. Spawning, Reproduction, and/or Early Development (SPWN)
 - q. Estuarine Habitat (EST)
 - r. Aquaculture (AQUA)
 - s. Water Quality Enhancement (WQE)
 - t. Flood Peak Attenuation/Flood Water Storage (FLD)
 - u. Wetland Habitat (WET)
5. The waters of Elk River support, or before recent timber harvest related degradation of water quality, have supported, domestic and agricultural water supplies for more than 100 residents.
6. The waters of Elk River support coho and Chinook salmon, and steelhead and cutthroat trout. Coho salmon, Chinook salmon, and steelhead trout are listed as threatened under the Federal Endangered Species Act in the Elk River watershed. Additionally, the California Fish and Game Commission amended the California Endangered Species Act (CESA) to list coho salmon as threatened in the Southern Oregon / Northern California Coast Evolutionarily Significant Unit (ESU), which includes Elk River.

Water Quality Objectives and Prohibitions

7. The Basin Plan contains water quality objectives developed to protect the above-listed beneficial uses of water. Economic impacts were considered as required by law during the development of those objectives. Additionally, the specific economic issues raised by these proposed watershed-wide Waste Discharge Requirements (hereinafter "WDRs") were considered in considerable detail in this process. The WDRs adopted by this Order (Attachment 1) implement the Basin Plan water quality objectives. Compliance with water quality objectives will protect the beneficial uses listed in Finding 4 above.
8. The receiving water limitations on landslide-related sediment discharges contained in the attached WDRs are numeric interpretations of narrative objectives.

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These narrative objectives specifically include two prohibitions contained in the Basin Plan's *Action Plan for Logging, Construction and Associated Activities* (Basin Plan section 4, page 4-32.00), and two water quality objectives contained in the related *Guidelines for Implementation and Enforcement of Discharge Prohibitions Relating to Logging, Construction, and Associated Activities* (Basin Plan section 3, pages 3-2.00 and 3-3.00, and section 4, page 4-29.00):

"1. The discharge of soil, silt, bark, slash, sawdust, or other organic or earthen material from any logging, construction or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited." (Basin Plan, section 4, page 4-32.00.)

"2. The placing or disposal of soil, silt, bark, slash, sawdust, or other organic or earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited." (Basin Plan, section 4, page 4-32.00.)

"5. Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses (Basin plan, section 4, page 4-32.00)"; and

"6. The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses." (Basin Plan, section 4, page 4-32.00).

9. As required by California Water Code section 13263, these WDRs are crafted to implement the Basin Plan, and in so doing, the Regional Water Board has taken into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other (including previous and proposed) waste discharges, the need to prevent nuisance, and considerations of the provisions of California Water Code section 13241.

10. The Regional Water Board has taken the factors set out in California Water Code section 13241 into consideration; including all available evidence regarding (a) past, present and probable future beneficial uses of water; (b) environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto; (c) water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area; (d) economic considerations (see findings [s eleven through thirteen](#), below), (e) the need for developing housing within the region, and (f) the need to develop and use recycled water.

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11. Although Water Code section 13241 directs the Regional Water Board to take into account "economic considerations," it does not prescribe a particular manner for doing so. The method of evaluating economic considerations is effectively within the discretion of the Regional Water Board to determine. (City of Arcadia v. State Water Resources Control Board (2006) 135 Cal.App.4th 1392, 1415.) It is sufficient to satisfy the command of section 13241 if the Regional Water Board has considered the "costs of compliance" with waste discharge requirements. (City of Burbank v. State Water Resources Control Board (2005) 35 Cal.4th 613, 625; see also City of Arcadia, supra, 135 Cal.App.4th at pp. 1415-1419 [upholding trash TMDL's discussion of compliance costs]; Rancho Cucamonga, supra, 135 Cal.App.4th 1377, 1386 [requirement demands only a discussion of the compliance costs].)

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12. These Watershed-wide WDRs are anticipated to contribute to the larger regulatory effort to protect beneficial uses in a manner that will ultimately have many positive economic effects. These include reductions in losses in many areas: commercial and non-commercial fisheries; costs associated with sediment source abatement activities such as road repairs and upgrades, landslide stabilization and remediation. It is also anticipated that the Discharger will expend a not insignificant amount of money in preventing discharges through erosion control plans and other efforts required by the Order. Many of those requirements overlap to some extent with existing requirements of other resource and environmental protection laws..

13. The Regional Water Board has considered the testimony, evidence, and other available information on the economic impacts implicated by discharges of sediment, including financial burdens related to sediment discharges as borne by downstream landowners and residents and the larger community, the impairment of beneficial uses, including anadromous fisheries, and the cost of compliance with the WDRs. As directed by statute, the attached WDRs are calculated to "attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible." (California Water Code section 13000.)

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14. Based in part on due consideration of the available evidence and public policy considerations relating to findings number nine, ~~ten~~ through thirteen above, the Regional Water Board finds that the receiving water limitations and other provisions set out in these WDRs are reasonably necessary to protect beneficial uses, to prevent nuisance, to comply with applicable prohibitions, and to achieve water quality objectives.

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15. The US Environmental Protection Agency and State Water Resources Control Board may certify that the California Forest Practice Rules are Best Management Practices for timber operations on non-federal lands, at which time Timber Harvesting Activities on private and state-owned lands will be exempt from waste

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discharge requirements pursuant to the Z'berg-Nejedly Forest Practice Act Section 4514.3, except as provided for in Section 4514.3(b)(1)-(3). That certification has not occurred to date.

16. Waste Discharge Requirements must implement the Basin Plan, which prohibits the discharge of sediment waste from timber harvest related activities in amounts deleterious to beneficial uses (Basin Plan pp. 4-28 - 4-30), and must be crafted to address the need to prevent nuisance (California Water Code section 13263(a)). California Water Code section 13050 defines nuisance to mean anything which meets all of the following requirements:

- (1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.
- (2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.
- (3) Occurs during, or as a result of, the treatment or disposal of waste.

Current Conditions in Elk River

17. Sediment deliveries to Elk River have increased in response to accelerated Timber Harvesting Plan Activities by other timberland owners in the watershed¹, resulting in impacts to water quality conditions documented by residents and Regional Water Board staff:

- a. Significant discharges of sediment and organic debris to watercourses aggraded the stream channels in some areas, significantly reducing channel capacity;
- b. Increased sediment and organic material can also produce tastes and odors offensive to the senses, and damage surface water supply intakes, treatment systems and domestic plumbing and appliances; and
- c. Increased turbidity due to excessive fine sediments also provides a medium to promote bacteriological growths and reduces the effectiveness of water disinfection for domestic water supplies.

18. Excessive fine sediment has been shown to detrimentally affect spawning gravel for fish and to reduce survival from egg to emergence stages by reducing intragravel oxygen and gravel permeability and by entombing fish larvae within gravel interstices, and can reduce the production of food organisms for juvenile fish. Furthermore, increased excessive bedload results in deposition of sediment that reduces stream pool size and habitat availability for aquatic species, and reduces channel capacity, which leads to increased flooding of adjacent lands. It also results in reduced summer storage due to filled pools, and may reduce surface

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The Z'Berg Nejedly Forest Practices Act of 1973 (FPA) provides that timber operations conducted consistent with the FPA in a timber production zone shall not constitute a nuisance. (Gov't Code section 51115.5(a).) In this setting, however, it is the increased peak flows and landslide-related deliveries of sediment from disturbed lands that create the nuisance conditions, and these discharges are what is regulated by the receiving water limits in these WDRs to protect beneficial uses and prevent nuisance, as required by the Porter-Cologne Water Quality Control Act.¶

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¹ As detailed in the Order No. R1-2006-0038 (finding 17, page 7,) over the last twenty years the Pacific Lumber Company harvested approximately 80% of its ownership in the Elk River and Freshwater Creek watersheds.

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flow since much of the streamflow is within the channel sediments during the summer.

19. The Elk River watershed is listed as an impaired water body under Section 303(d) of the Clean Water Act due to sedimentation/siltation. Water quality problems cited under the listing include: sedimentation, threat of sedimentation, impaired irrigation water quality, impaired domestic supply water quality, impaired spawning habitat, increased rate and depth of flooding due to sediment, and property damage.

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20. On December 16, 1997, representatives of CDF, California Department of Fish and Game, California Division of Mines and Geology (now known as the California Geologic Survey), and Regional Water Board staff reached consensus that the Elk River watershed had significant adverse cumulative watershed impacts, with timber harvesting a contributing factor.

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21. However, according to CDF records, the Discharger has not conducted any significant Timber Harvesting Plan Activities in their Elk River ownership for at least eight years. The result of this lack of management activity is that the Discharger has not made a significant contribution to the current cumulative impacts existing in the South Fork Elk River.

22. Conditions in this watershed, tools for recovery, and the linkages to Timber Harvesting Plan Activities and associated road construction are documented in a number of reports and scientific panel reviews:²

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- a. At the request and under the direction of licensed professionals on the Regional Water Board staff, scientists at the USDA Forest Service Pacific Southwest Research Station's Redwood Sciences Laboratory (RSL) in Arcata, CA prepared analyses of the data in Pacific Watershed Associates' (PWA's) reports for Bear Creek (Reid, 1998a) and for North Fork Elk River (Reid, 1998b). These analyses, authored by Dr. Leslie Reid, highlighted the strong relationship between recent logging and increases in landslide-delivered sediment in these watersheds. Furthermore, based on these relationships and the data available in PWA's reports, the analyses offered simple empirical models (each based on the same general approach) that could be used to determine future rates of timber harvesting that would adequately protect the beneficial uses of water from future harvest-related landslides, achieve water quality objectives, and allow for watershed recovery from cumulative impacts. Specifically, the approach identifies the rate of sediment production expected on forested acres and those expected from harvested acres.

² Only the most directly relevant of the numerous relevant reports and reviews referenced by staff are specifically cited here. The record contains a number of additional documents prepared specific to the regulatory actions governing Pacific Lumber Company's activities, which also form the factual background for existing condition and physical processes occurring in this watershed as context for GRDC's WWDRs. They are cited in the staff report and technical documents, and incorporated herein by reference.

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- b. In 2002, Regional Water Board engaged the assistance of a panel of nationally recognized independent scientific experts to review the available science for regulating timber harvest related discharges in Elk and Freshwater watersheds ("Independent Scientific Review Panel" or "ISRP"). The ISRP produced two reports: "Phase I" published on December 27, 2002; and "Phase II" published on August 12, 2003).
- c. The ISRP found that Reid's approach, referred to in their reports as the "empirical sediment budget approach," was superior to the other methodologies it reviewed, given the information currently available in the Five Watersheds. They stated that the empirical sediment budget's use of sediment production ratios, rather than absolute rates, alleviated much of the difficulty associated with background rate estimation by determining a ratio of harvested to background rates. Acknowledging criticisms to the empirical sediment budget approach (primarily that it did not consider areas that were off-limits to harvesting because of high landslide potential), the ISRP identified means of addressing those issues. In Appendix C of its first report (ISRP, 2002), the ISRP provided a detailed discussion and derivation of a refined version of Dr. Reid's initial work in which they identified how to consider the sediment production from areas with different landslide hazards. Regional Water Board staff have modified the original model based on those recommendations.
- d. The Empirical Harvest-Related Landslide Delivery Reduction Model (Landslide Reduction Model) is a more developed version of the empirical sediment budget approach originally offered by the Redwood Sciences Laboratory, and then further refined and recommended for use by the ISRP. The 2006 report background "Landslide Reduction Model for WWDRs in Elk River and Freshwater Creek," contains information regarding the problem of harvest-related landsliding in the Elk River and Freshwater Creek watersheds, the history of numerical model development, the derivation of the model, and the rationale for its use. The work was performed by a team of California licensed professional engineers and geologists on staff at the Regional Water Board. Specifically, the approach identifies the rate of sediment production expected on recently harvested areas, based on past observations, and compares that to the rate of sediment production expected on older, forested areas. The empirical sediment budget approach for modeling sediment production in a watershed is based on stratifying the watershed into land classes and applying rate coefficients that quantify the rate of sediment produced from each land class. The sediment production from a watershed can be represented as the sum of contributions from each distinct land class. On the Discharger's lands in this case, hazard zonation strategy failed to yield meaningful results, so hazard classes were combined.
- e. Regional Water Board staff's *Preliminary Assessment of Flooding in Lower Elk River* (Patenaude, 2004) concluded that: 1) channel capacity as a function of cross-sectional area decreased by at least 35% from 1965 to 2003, 2) the

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channel capacity as a function of streamflow capacity has decreased by 60% between 1965 and 1998, and 3) the channel capacity as a function of bankfull depth decreased by at least 20% from 1965 to 2003. Residents' reports of recent increased flooding frequency and magnitude in lower Elk River are consistent with these measured physical changes.

23. The Regional Water Board Executive Officer has issued Cleanup and Abatement Orders to Palco, the largest landowner in the watershed to address existing sediment sources and restore damaged water supplies in the Elk River watershed. These Orders include: Order No. 98-100 to abate the effects of increases sediment deposition by providing alternate water supplies and restoring historic, existing and potential beneficial uses; and Orders No. R1-2002-0114 and No. R1-2004-0028 to require inventory and remediation of sediment delivery sites in the North Fork and South Fork/Mainstem of Elk River, respectively.

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24. However, due to the lack of recent Timber Harvesting Plan Activities by GRDC, there is no evidence in the record of the presence of any significant management-related erosion sites on the Discharger's lands, and no history of noncompliance problems. Remediation of any controllable sediment sources will occur over the life of this permit, using the process detailed in the discharger's "PWA Report", and the erosion control plans that will be submitted with each Timber Harvest Plan (THP) that is enrolled under these WWDRs.

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25. The Discharger has submitted a South Fork Elk River Management Plan, which contains a series of prescriptions for riparian areas, areas of geologic concern, roads and landings, and other timber harvesting plan activities.

WWDR Structure and Coverage

26. The Discharger currently is proposing to engage in Timber Harvesting Plan Activities within its Elk River ownership which will result in additional discharges and threatened discharges of sediment to the Elk River and its tributaries, potentially contributing to further impairment of the beneficial uses of those waters than what has already occurred as a result of timber harvesting and related activities.

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27. The Board adopted *General Waste Discharge Requirements for Discharges Related to Timber Harvest Activities On Non-Federal Lands in the North Coast Region* (Order No. R1-2004-0030) (GWDRs) on June 23, 2004. Against the backdrop of the findings described above, the Board included a provision in the GWDRs that provides that the Executive Officer "shall rescind or deny the applicability of these General WDRs" where, among other things, "conditions unique to the watershed or watershed segment (including, but not limited to, cumulative impacts, special hydrographic characteristics, Total Maximum Daily Load standards, the extent of Timber Harvesting Plan Activities, intensity of

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ground disturbing activities, large acreage ownership holdings or management plans, rainfall, slopes, soil, effected domestic water supplies, an increased risk of flooding, or proximity to local, State, or National Parks) warrant further regulation.”

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28. The Regional Water Board adopted the Categorical Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region (Order R1-2004-0016, Categorical Waiver) on June 23, 2004. That Order contains the same language as the GWDR (finding 36) regarding rescission or denial of a waiver.

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29. The Discharger’s proposed Timber Harvesting Plan Activities are not eligible for coverage under the Categorical Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region (Categorical Waiver) (Order No. R1-2004-0016), nor the General Waste Discharge Requirements for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region (GWDR) (Order No. R1-2004-0030), adopted by the Regional Water Board on June 23, 2004.

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30. The Regional Water Board has a statutory obligation to adopt Waste Discharge Requirements whenever there is a discharge of waste occurring or proposed, or a threat exists for the discharge of waste. An exception to this requirement is where the Regional Water Board finds that a waiver of waste discharge requirements for a specific type of discharge is in the public interest (CWC section 13260-13269). The Regional Water Board must craft WDRs to implement the Basin Plan, (CWC § 13263(a)) and to be consistent with policies governing water quality adopted by the State Water Resources Control Board, including the Plan for California’s Nonpoint Source Pollution Control Program and Five-Year Implementation Plan (December, 2003). The proposed WDRs are consistent with both the Basin Plan and the State Water Board’s *Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program* (May 2004).

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31. As required by California Water Code section 13263, these watershed-wide WDRs are crafted to implement the Basin Plan, and in so doing, the Regional Water Board has taken into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other (including previous) waste discharges, the need to prevent nuisance, and considerations of the provisions of California Water Code section 13241.

32. As directed by statute, the attached watershed-wide WDRs are calculated to “attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.”

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(California Water Code section 13000.)

33. Prescription of waste discharge requirements for the Discharger's Timber Harvesting Plan Activities in the Elk River watershed are appropriate given the history, current condition of the watershed and its streams, the inapplicability of the GWDR and Categorical Waiver Orders, and as required by the California Water Code.
34. On June 17, 2004, the Executive Officer sent a letter that required submission of a Report of Waste Discharge (ROWD) for the Elk River watershed from the Discharger by July 16, 2004. On September 7, 2004, the discharger submitted an ROWD that consisted of filing fee; harvest history data; hazard maps; landslide database; a road assessment for McCloud Creek, including an inventory summary; LIDAR maps, potential future harvest maps, for both the 5- and 10-year period; a management plan for the South Fork Elk properties; and other associated materials. The ROWD was deemed complete on June 16, 2006.
35. A Total Maximum Daily Load (TMDL,) pursuant to Section 303 (d) of the Clean Water Act, is slated for completion, and adoption by the Board, in 2007. The TMDL may contain timeframes or tasks that differ from those contained in these WDRs. At such time as the TMDL is adopted, it will supersede those contained herein, and may result in changes to certain requirements.
36. Regional Water Board staff have developed a framework for the WDRs that addresses cumulative watershed effects through numeric receiving water limitations for sediment yield from timber harvest related landslides, and other terms set out in the attached WDRs.
37. There appears no significant evidence currently available indicating that flooding frequency and magnitude have increased significantly in the South Fork Elk River watershed, therefore, these watershed-wide WDRs do not contain an effluent limitation based on peak flow increases.
38. The Regional Water Board has notified the Discharger and interested agencies and persons of its intent to take this action, and has provided them with an opportunity for a public hearing and an opportunity to submit their written and oral comments and recommendations
39. This WDR Order (Attachment 1) is consistent with the provisions of State Water Resources Control Board (State Water Board) Resolution No. 68-16, *Statement of Policy with Respect to Maintaining High Quality of Waters in California*. This Order will result in the reduction in the discharge of waste, not an increase.
40. Prescription of waste discharge requirements for the Discharger's Timber Harvesting Plan Activities in the South Fork Elk River watershed are appropriate given the history, current condition of the watershed and its streams, the

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inapplicability of the GWDR and Categorical Waiver Orders, and as required by the California Water Code.

Antidegradation

41. This watershed-wide WDR Order (Attachment 1) is consistent with the provisions of State Water Resources Control Board (State Water Board) Resolution No. 68-16, Statement of Policy with Respect to Maintaining High Quality of Waters in California. This Order will result in the reduction in the discharge of waste, not an increase.

CEQA Compliance

42. There are two types of CEQA analysis. The first is for individual Timber Harvesting Plans under the CDF. The second is for watershed-wide WDRs as contained in the initial study and negative declaration.
43. Timber Harvesting Plan Activities covered under these WDRs must, as a precondition, have achieved compliance with the California Environmental Quality Act (CEQA) (Pub. Resources Code §§ 21000 et seq.) through the CDF's Timber Harvesting Plan (THP) approval process. In issuing THPs, CDF acts as "lead agency," using a certified "functional equivalency" process, producing the equivalent to an Environmental Impact Report.
44. The Regional Water Board does not grant timber harvesting permits, but reviews these permitted activities and their attendant environmental documents to determine and require compliance with the Basin Plan and the Porter-Cologne Water Quality Control Act. In that process, the Regional Water Board acts as a responsible agency under CEQA, relying on the environmental review documents prepared by CDF. CEQA specifically provides that in so doing, the environmental documents prepared by the lead agency are to be conclusively presumed adequate, with limited specified exceptions, and must be relied upon by the responsible agency in complying with CEQA. (Pub. Resources Code, section 21167.2; Title 14, California Code of Regulations, section 15231.) In acting as a responsible agency reviewing these permitted operations, the Regional Water Board exercises its authority to require any additional regulatory restrictions that may be necessary to go beyond mere avoidance of "significant adverse environmental impacts," to require whatever is necessary to comply with the requirements of the Basin Plan and Porter-Cologne Water Quality Control Act.
45. These watershed-wide WDRs are the mechanism by which the Regional Water Board will assure the maintenance, restoration, or enhancement of water quality, in compliance with the Basin Plan and other applicable water quality laws, in the performance of the Board's responsible agency role under CEQA. Consistent with the CEQA Guidelines' Class 7 Exemption, these watershed-wide WDRs are

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<#> These Watershed-wide WDRs are anticipated to contribute to the larger regulatory effort to protect beneficial uses in a manner that will ultimately have many positive economic effects. These include reductions in losses in many areas: commercial and non-commercial fisheries; costs associated with sediment source abatement activities such as road repairs and upgrades, landslide stabilization and remediation. It is also anticipated that the Discharger will expend a not insignificant amount of money in preventing discharges through ... [1]

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Prescription of waste discharge requirements for the Discharger's Timber Harvesting Plan Activities in the Elk River watershed are appropriate given the history, current condition of the watershed and ... [2]

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an action taken by a regulatory agency “to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment.” (Title 14, California Code of Regulations, section 15307.) Similarly, consistent with Class 8, WDRs are an action taken by a regulatory agency “to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment.” (Title 14, California Code of Regulations, section 15308.)

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46. Despite the eligibility for these exemptions, out of an abundance of caution, and knowing the controversial nature of Timber Harvesting Plan Activities and all regulatory actions relating thereto, the Regional Water Board, acting as the lead agency for this “project” under CEQA, has conducted an Initial Study in accordance with Title 14, CCR Section 15063. (The “project” for CEQA purposes is the adoption of the attached WDRs).

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47. The Regional Water Board staff has prepared a proposed Negative Declaration, a copy of which is attached hereto, in accordance with CEQA and the CEQA Guidelines (Title 14, CCR Section 15000 et seq.). The Negative Declaration concludes that the adoption of these WDRs will not have a significant adverse impact on the environment, individually or cumulatively.

48. Copies of the proposed Negative Declaration were transmitted to all agencies and persons known to be interested in this matter according to the applicable provisions of CEQA. Both documents are included as Attachment 2.

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49. The Regional Water Board conducted a public meeting on August 9, 2006 in Santa Rosa, California, considered all evidence concerning this matter, and hereby adopt the adopted the Negative Declaration, and this Order.

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50. The proposed Negative Declaration is fully supported by the record and the law. There is no evidence in the record to support a fair argument that these WDRs will result in significant adverse environmental effects.

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51. The Regional Water Board, in accordance with CEQA and the CEQA Guidelines, determines that there will be no significant adverse environmental impacts, individually, or cumulatively from this Resolution and the attached watershed-wide WDRs, provided that the Discharger complies with its terms and provisions.

Remedies

52. As provided by law, under Water Code section 13320, aggrieved parties may petition this matter to the State Water Board within 30 days of the date of this resolution.

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RESOLUTION

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THEREFORE, it is hereby resolved that:

1. The Regional Water Board approves and adopts the Initial Study and Negative Declaration prepared for the issuance of watershed-wide WDRs (Attachment 2);
2. The Executive Officer is directed to file all appropriate notices;
3. Waste discharge requirements are appropriate to direct that discharges of waste associated with the Discharger's Timber Harvesting Plan Activities adhere to the provisions contained in Division 7 of the California Water Code and regulations adopted thereunder;
4. The Regional Water Board accordingly prescribes waste discharge requirements for the Elk River watershed by adopting Order No. R1-2006-0043, which appears as Attachment 1 to this Resolution; and

The Executive Officer is directed to issue, under her delegated authority, Monitoring and Reporting Program (No. R1-2006-0043) as an enforceable order under Water Code section 13267(b) (Attachment 4). The EO may amend that order from time to time as the facts and circumstances may warrant so, so long as it continues to provide the information necessary to implement the attached watershed-wide WDRs.

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IT IS HEREBY ORDERED that the Discharger, in order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted thereunder, shall comply with the Waste Discharge Requirements for the Elk River watershed as set forth in Attachment 1 to this Resolution, incorporated herein by reference.

CERTIFICATION

I, Catherine Kuhlman, Executive Officer do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, North Coast Region, on August 9, 2006.

Catherine Kuhlman
Executive Officer

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Economic Considerations

Although Water Code section 13241 directs the Regional Water Board to take into account “economic considerations,” it does not prescribe a particular manner for doing so. The method of evaluating economic considerations is effectively within the discretion of the Regional Water Board to determine. (City of Arcadia v. State Water Resources Control Board (2006) 135 Cal.App.4th 1392, 1415.) It is sufficient to satisfy the command of section 13241 if the Regional Water Board has considered the “costs of compliance” with waste discharge requirements. (City of Burbank v. State Water Resources Control Board (2005) 35 Cal.4th 613, 625; see also City of Arcadia, supra, 135 Cal.App.4th at pp. 1415-1419 [upholding trash TMDL’s discussion of compliance costs]; Rancho Cucamonga, supra, 135 Cal.App.4th 1377, 1386 [requirement demands only a discussion of the compliance costs].)

These Watershed-wide WDRs are anticipated to contribute to the larger regulatory effort to protect beneficial uses in a manner that will ultimately have many positive economic effects. These include reductions in losses in many areas: commercial and non-commercial fisheries; costs associated with sediment source abatement activities such as road repairs and upgrades, landslide stabilization and remediation. It is also anticipated that the Discharger will expend a not insignificant amount of money in preventing discharges through erosion control plans and other efforts required by the Order. Many of those requirements overlap to some extent with existing requirements of other resource and environmental protection laws..

The Regional Water Board has considered the testimony, evidence, and other available information on the economic impacts implicated by discharges of sediment, including financial burdens related to sediment discharges as borne by downstream landowners and residents and the larger community, the impairment of beneficial uses, including anadromous fisheries, and the cost of compliance with the watershed-wide WDRs. The Regional Water Board finds that the costs of compliance are reasonable under the circumstances.

Prescription of waste discharge requirements for the Discharger’s Timber Harvesting Plan Activities in the Elk River watershed are appropriate given the history, current condition of the watershed and its streams, the inapplicability of the GWDR and Categorical Waiver Orders, and as required by the California

Water Code.